IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12/08/2004

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THE HON'BLE MR.JUSTICE P.K. MISRA
AND
THE HON'BLE MR.JUSTICE S.R. SINGHARAVELU

Writ Petition No.11641 of 2003

Geetha Ramani .. Petitioner

-Vs-

1. The District Educational Officer
Kancheepuram.

2. The Headmistress
B.M.S. Government Girls Higher
Secondary School
Chinna Kancheepuram
Kancheepuram District.

3. The Director of School Education
Chennai 600 006.

4. The State of Tamil Nadu rep. by
Secretary to Government
School Education Department
Fort St. George, Chennai 600 009.

5. The Tamil Nadu Administrative
Tribunal rep. by its Registrar
Chennai 104. .. Respondents

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Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Ms. Selvi George

For Respondents : Mr.P.S. Sivashanmuga Sundaram
Additional Government Pleader

:ORDER

(Order of the THE COURT WAS made BY

P.K. MISRA, J.)

Heard Ms. Selvi George, learned counsel appearing for the petitioner and Mr.P.S. Sivashanmuga Sundaram, learned counsel appearing for the respondents.

2. The facts giving rise to the present writ petition are as follows: One Mr.A. Gajendran was employed as a Secondary Grade Teacher and he died in harness on 4.8.1986. The said person had married one Valliammal. But, since there was no issue through the said Valliammal, he had married one Chellammal. The present writ petitioner is the daughter born to him through his second wife Chellammal. After the death of the bread winner of the family, the first wife Mrs.Valliammal died on 29.9.1990. An application was made on behalf of the present petitioner for appointment on compassionate ground and ultimately, in the year 1996, the petitioner was appointed as the Junior Assistant/ Typist. Subsequently, by order dated 1.7.2002, she was terminated from service solely on the ground that she was born through the second wife and since the second marriage was void, she was not entitled to appointment on compassionate ground.

3. The present petitioner filed Original Application No.4359 of 2002 before the Tamil Nadu Administrative Tribunal. The Tribunal observed that "... Government has passed G.O. stating that the legal heir and dependent of the Government servant is eligible to claim compassionate appointment including a widow. Eligibility also extended to an unmarried daughter, a widowed daughter or a destitute daughter. But, child born to the second wife is not eligible for compassionate appointment on any account. The Government has made it very clear by passing a G.O. wherein it had stated that compassionate appointment shall not be extended to children born to a second wife. The applicant admittedly born to Chellammal who claims to be second wife of late Gajendran and therefore, she is not eligible to be appointed on compassionate ground. The applicant's appointment has been made by the Chief Educational Officer by mistake or by overlooking these facts. When the circular was confirmed by the Government the Director of School Education pointed out the ineligibility of the applicant to secure compassionate appointment and has directed the District Educational Officer to issue cancellation order. ... "

4. The learned counsel appearing for the petitioner has submitted that no Government Order had been produced either before the Tribunal or in this Court disentitling the child born through the second wife from seeking employment on compassionate ground on the death of the father. As a matter of fact, in G.O.Ms.No.560 dated 3.8.1977 which appears to be the relevant G.O. for the purpose of making appointment on compassionate ground, it is indicated that near relative, who is entitled to get appointment on compassionate ground includes only the wife/husband/son/unmarried daughter of the Government servant who died in harness.

5. The learned counsel for the petitioner submits that even though the second marriage of the deceased with the mother of the petitioner is void in view of Section 5(i) read with Section 11 of the Hindu Marriage Act

(hereinafter referred to as the "Act"), since Section 16 of the Act provides that the children born out of such void marriage shall be deemed to be the legitimate child, there is no justification to deny the benefit of the scheme for compassionate appointment to the dependent children of the deceased.

6. In the present case, the Tribunal has not at all considered the effect of Section 16 of the Act. In view of the provisions contained in Section 16 of the Act, there cannot be any doubt that the child born through the second wife, even though such marriage was void, shall be deemed as the legitimate child. Even there is nothing in the G. O. which says that only a child born in a lawful marriage would be considered as beneficiaries. In the absence of any specific provision and particularly, keeping in view the intention of Parliament, as reflected in Section 16 of the Act, we have no doubt in our mind that the benefit of G.O. is also available to the children born out of the void marriage. Our aforesaid view also receives support from the decision of the Apex Court in RAMESHWARI DEVI v. STATE OF BIHAR (2000 (2) SCC 431).

7. The intention under the G.O. issued for employment on compassionate ground is to give protection to the members of the family of the deceased employee. By no stretch of imagination, it can be stated that the children born through the second wife, even though the second marriage is void, are not members of such family. Having regard to all these aspects, we quash the order passed by the Tribunal and quash the order of termination. Accordingly, the writ petition is allowed. It would be deemed that the petitioner is restored in service from 1.7.2002. However, in the facts and circumst ances of the case, she would be entitled to 50% of the wages for the aforesaid period.

In the result, the writ petition is allowed. No costs. WPMP No.14658 of 2003 is closed.

Index : Yes
Internet: Yes

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